

REMARKS

Claims 8-9, 11, 51-53, and 55-57 are currently pending. Claims 1 and 54 have been canceled.

The Examiner has rejected claims 1, 8-11, 51-52, and 55 under 35 U.S.C. 102(a/e) as being anticipated by Brown (2003/0003127). Specifically, the Examiner argues that the Brown reference discloses the subject matter of independent claims 1 and 54.

Claims 1 and 54 have been canceled and claims 8-11, 51-52, and 55 have been amended to depend from claims 56 and 57. As will be stated below, claims 56 and 57 are in condition for allowance and since claims 8-11, 51-52, and 55 depend either directly or indirectly from claims 56 and 57, claims 8-11, 51-52, and 55 are also in condition for allowance. It is respectfully requested that the Examiner withdraw this rejection.

The Examiner has rejected claims 9-10 under 35 U.S.C. 103(a) as being unpatentable over Brown. Specifically, the Examiner argues that Brown teaches a device having differing rates of degradation, but is silent as to the numerical rates of degradation. However, the Examiner argues that the optimization within prior art conditions is obvious to one of ordinary skill in the art and that the selection of a material or equivalent recognized in the prior art supports a prima facie ease of obviousness. As stated above, claim 9 has been amended to depend from claim 56 and claim 10 depends from claim 9. As will be stated below, claim 56 is in condition for allowance and since claims 9 and 10 depend either directly or indirectly from claims 56, claims 9 and 10 are also in condition for allowance. It is respectfully requested that the Examiner withdraw this rejection.

The Examiner has rejected claims 56 and 57 under 35 USC 103(a) as being unpatentable over Brown, in further view of Evans 2003/0236573. Specifically, the Examiner argues that Brown teaches the devices of claims 56 and 57, but does not teach a device that is completely non-porous when initially implanted or a device that fills the interconnected pores throughout the entire ceramic structure. However, the Examiner argues that Evans teaches an implant which is initially a porous resorbable macrostructure where the pores of the device are filled with a microstructure that degrades more rapidly. Therefore, the Examiner argues that it would have been obvious to combine the teachings of Brown and Evans to get the inventions of Applicants claims 56 and 57.

Applicants respectfully disagree with the Examiner. Brown teaches a multi-layered scaffold with a porous polymer layer attached to a porous ceramic layer. The scaffold is used to repair a tissue junction by inducing one cell type to proliferate in the polymer phase of the scaffold and a second cell type to grow in the ceramic phase of the scaffold. Therefore, at all times during repair, these two porous layers are very important to the device and especially the type of repair that the device is used to generate. A person of ordinary skill in the art would not be motivated to modify the ceramic-polymer structure of Brown, in view of Evans, to get the devices of claims 56 and 57 (a non-porous device and a device including a porous ceramic structure and a polymer that fills the pores throughout the entire ceramic structure) because the use of these devices, even initially, would not serve to support the type of repair that the Brown device is made to address. Therefore, the Brown reference actually teaches away from the use of the devices of claims 56 and 57.

As a result of the above arguments, claims 56 and 57 are in condition for allowance and claims 8-11, 51-53, and 55, which depend either directly or indirectly from claims 56 and 57 are also in condition for allowance. It is respectfully requested that the Examiner withdraw this rejection.

Applicants do not acquiesce to the characterizations of the art. For brevity and to advance prosecution, however, Applicants may have not addressed all characterizations of the art, but reserve the right to do so in further prosecution of this or a subsequent application.

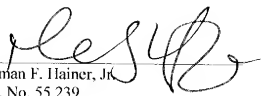
The absence of an explicit response by the Applicants to any of the Examiner's positions does not constitute a concession of the Examiner's positions. The fact that Applicants comments have focused on particular arguments does not constitute a concession that there are not other good arguments for patentability of the claims. All of the dependent claims are patentable for at least the reasons given with respect to the claims on which they depend.

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Respectfully submitted,

Date:

12/4/09


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